

# **DEVELOPMENT AGREEMENT**

**BY AND AMONG**

**CRESCENT RESOURCES, LLC, CAROLINA CENTERS, LLC  
KEY HARBOR COMMUNITIES, LLC, KEY HARBOR HOLDINGS, LLC**

**AND**

**CATAWBA COUNTY, NORTH CAROLINA**

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## STATE OF NORTH CAROLINA

## DEVELOPMENT AGREEMENT

## COUNTY OF CATAWBA

This Development Agreement (the "Agreement") is made and entered into this 16<sup>th</sup> day of April, 2007 by and among **Crescent Resources, LLC** ("Crescent"), a Georgia limited liability company authorized to conduct business in the State of North Carolina, **Carolina Centers, LLC** ("Carolina Centers"), a North Carolina limited liability company, **Key Harbor Communities, LLC** ("Communities"), a Georgia limited liability company authorized to conduct business in the State of North Carolina, **Key Harbor Holdings, LLC** ("Holdings"), a Georgia limited liability company authorized to conduct business in the State of North Carolina, and **Catawba County, North Carolina** (the "County"), a political subdivision of the State of North Carolina.

Key Harbor Communities and Key Harbor Holdings are referred to herein collectively as "Key Harbor".

### STATEMENT OF PURPOSE

1. Section 153A-349.1(a)(1) of the North Carolina General Statutes provides that "large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources."
2. Section 153A-349.1(a)(3) of the North Carolina General Statutes provides that "because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development."
3. Section 153A-349.1(a)(4) of the North Carolina General Statutes provides that "because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of development."
4. Section 153A-349.1(a)(5) of the North Carolina General Statutes provides that "because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas."
5. Section 153A-349.1(a)(6) of the North Carolina General Statutes provides that "to better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments."
6. In view of the foregoing, Sections 153A-349.1(b) and 153A-349.3 of the North Carolina General Statutes expressly authorize local governments and agencies to enter into development agreements with developers pursuant to the procedures and requirements of Sections 153A-

349.1 through 153A-349.13 of the North Carolina General Statutes, which procedures and requirements include approval of the development agreement by the governing body of the local government by ordinance after a duly noticed public hearing.

7. Section 153A-349.4 of the North Carolina General Statutes restricts the use of a development agreement to “property that contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of the application).” N.C.G.S. 153A-349.4 further provides that “development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years.”

## **BACKGROUND**

1. Key Harbor Communities and Key Harbor Holdings are the owners of an approximately 704 acre parcel of land located on the north side of Island Point Road approximately 1/2 mile east of the intersection of Island Point Road and Sherrills Ford Road (hereinafter referred to as the “Key Harbor Property”), which parcel of land is more particularly described on Exhibit A attached hereto and incorporated herein by reference, and more particularly depicted on Exhibit B attached hereto and incorporated herein by reference.

2. Carolina Centers is the owner of an approximately 192 acre parcel of land located east of the intersection of Highway 150 and Slanting Bridge Road (hereinafter referred to as the “Village Center Property”), which parcel of land is more particularly described on Exhibit C attached hereto and incorporated herein by reference, and more particularly depicted on Exhibit B.

3. Carolina Centers is the owner of an approximately 630.50 acre parcel of land located approximately 1/2 mile north of the intersection of Molly’s Backbone Road and Sherrills Ford Road (hereinafter referred to as the “Terrapin Creek Property”), which parcel of land is more particularly described on Exhibit D attached hereto and incorporated herein by reference, and more particularly depicted on Exhibit B.

4. Carolina Centers is the owner of an approximately 600 acre parcel of land located approximately two miles northwest of the intersection of Highway 150 and Little Mountain Road (hereinafter referred to as the “Mountain Creek Property”), which parcel of land is more particularly described on Exhibit E attached hereto and incorporated herein by reference, and more particularly depicted on Exhibit B.

5. The Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property are located in the southeastern portion of Catawba County in an area known as Sherrills Ford. The Sherrills Ford area is bounded by Lake Norman and the Catawba River to the east, the Catawba County - Lincoln County line to the south, N.C. Highway 16, Buffalo Shoals Road and Murray Hills Road to the west and U.S. Highway 10, the Town of Catawba’s Extraterritorial Jurisdiction and the Catawba River to the north.

6. Beginning in 2000, the County and the Sherrills Ford Small Area Plan Committee engaged in land use studies and comprehensive planning for the Sherrills Ford area for the purpose of developing a small area plan for this portion of the County. The result of these

efforts was the drafting of the Sherrills Ford Small Area Plan (the "Small Area Plan") that was adopted by the Catawba County Board of Commissioners (the "Board of Commissioners") on February 17, 2003. The guiding principles of the Small Area Plan include, among other things, balanced land uses with a mixture of housing, shopping and employment; pedestrian oriented development; well planned retail development with varying sizes and functions; and flexibility in regulations.

7. As outlined in the Small Area Plan, and as a result of changing conditions relating to sewer availability and the desire to maximize development opportunities along the utility corridors, the County has endorsed a development vision for the Sherrills Ford area that proposes (a) to provide for lower developable population densities on the Terrapin Creek Property and the Mountain Creek Property and higher densities on the Village Center Property and the Key Harbor Property; (b) the development of a mixed use project on the Village Center Property that would contain, among other things, retail and office uses as well as single family detached homes and attached single family homes; and (c) to transfer the costs of the development of certain amenities and improvements from public resources to the private developments described herein. The County's development vision also contemplates low density and conservation development of the Terrapin Creek Property, and conservation and/or recreational uses on portions of the Mountain Creek Property.

8. The County approved a new zoning ordinance known as the Unified Development Ordinance (the "UDO") on February 5, 2007 that contains new zoning districts and regulations that allow greater development flexibility than was previously allowed under the County's former zoning ordinance. The UDO provides the County with the tools to implement the Small Area Plan.

9. Crescent agrees that it will work diligently and in good faith to secure funding from public, private and/or not-for-profit sources to enable the County to acquire the Mountain Creek Property as contemplated in the Comprehensive Relicensing Agreement for the Catawba-Wateree Project (FERC No. 2232) (the "Relicensing Agreement"). Crescent's efforts will include (i) sponsoring and funding the accumulation of baseline data and information; (ii) preparing a perennial stream channel and wetlands delineation and buffer surveys; and (iii) applying to the NC Clean Water Management Trust Fund and other entities to fund the acquisition for the County. The proposed purchase price shall be based on the appraised market value of the Mountain Creek Property as if it were zoned for the development of a single family residential community with a density of one lot per two acres, and one lot per .75 acres within 1,000 feet of the Lake Norman Project Boundary, less the reduction in value which would result from the application of perennial stream channel and wetlands conservation easements, and less the value of up to thirty (30) acres of land within the Mountain Creek Property proposed by Duke Energy for a recreation area as described in the Relicensing Agreement, but with total density not exceeding one hundred and fifty (150) homes. Duke Energy's acquisition support funding, as proposed above, shall be credited towards the "match" required by the NC Clean Water Management Trust Fund.

In the event that the applications for funding are denied or the funding is not granted prior to August 1, 2009 or the closing of the acquisition is not consummated by December 31, 2009, then, unless the dates specified herein are not extended, Crescent's obligation to assist in

the acquisition of the Mountain Creek Property for the County shall expire, and Crescent shall develop using Catawba's County's cluster option a single family residential community on one-half of the Mountain Creek Property (one-half of the Mountain Creek Property being determined after deducting up to 30 acres that are set aside for the recreation area described in the Relicensing Agreement) in accordance with the density described above, namely, one lot per two acres, and one lot per .75 acres within 1,000 feet of the Lake Norman Project Boundary, provided that Crescent shall also dedicate the perennial stream channel and the wetlands conservation easements as proposed above, with the easement areas not being counted towards the eligible development area, and with total density not exceeding one hundred and fifty (150) homes. Furthermore, Crescent may utilize the County's "cluster provision" in planning this development, which will allow the eligible density to be placed on lots as small as one-half acre. The one-half portion of the Mountain Creek Property that may be developed by Crescent (approximately 300 acres of the remaining 600 acres after the 20 to 30 acres are set aside for the recreation area as provided in the Relicensing Agreement) is identified on Exhibit F. The balance of the Mountain Creek Property not being developed by Crescent (including the conservation easements) totals approximately 300 acres, and this land shall be donated to the County as open space.

10. Key Harbor desires to develop a multi-year, multi-phased residential subdivision on the Key Harbor Property that will contain single family detached homes on lots of various sizes, attached single family homes and certain amenities (the "Key Harbor Subdivision"). More specifically, the Key Harbor Subdivision will contain a maximum of 1,500 dwelling units, of which a minimum of 40 dwelling units and a maximum of 100 dwelling units shall be attached single family homes. Attached hereto as Exhibit G and incorporated herein by reference is a schematic site plan of the Key Harbor Subdivision. To develop the Key Harbor Subdivision in accordance with the attached schematic site plan, public sewer must be made available to the Key Harbor Property by the County as provided in this Agreement.

11. A subdivision sketch plan for a portion of the Key Harbor Property was approved by the Catawba County Subdivision Review Board on March 31, 2006 (the "Approved Sketch Plan"). The Approved Sketch Plan provides for the development of a residential subdivision on a portion of the Key Harbor Property containing a maximum 212 single family lots (the "212 Lot Subdivision"). The 212 Lot Subdivision complies with the former and existing zoning of the Key Harbor Property. The schematic site plan of the Key Harbor Subdivision attached hereto as Exhibit G includes and incorporates the 212 Lot Subdivision. Preliminary subdivision approval of the 212 Lot Subdivision was granted on June 27, 2006 by the Catawba County Subdivision Review Board.

12. In the event that public sewer is not made available to the Key Harbor Property as provided herein, then Key Harbor may develop a 355 lot single family residential subdivision on the Key Harbor Property, subject to the approval of a preliminary plat by the Catawba County Subdivision Review Board (the "355 Lot Subdivision"). The 355 Lot Subdivision would include and incorporate the 212 Lot Subdivision, and it may be developed with septic systems.

13. Crescent desires to develop a mixed use project on the Village Center Property that could contain retail, office, governmental, educational, service and residential uses (the "Village Center Project"). A schematic site plan of the Village Center Project is attached hereto as

Exhibit H and incorporated herein by reference. To develop the Village Center Project in accordance with the attached schematic site plan, public sewer must be made available to the Village Center Property by the County as provided in this Agreement.

14. Crescent desires to develop the Terrapin Creek Property as a low density conservation subdivision containing a maximum of 100 single family lots as more particularly described herein (the "Terrapin Creek Subdivision"). The Terrapin Creek Subdivision must be reviewed and approved by the Catawba County Subdivision Review Board.

15. After careful review and deliberation, the County has determined that the above described subdivisions and developments are consistent with the adopted Small Area Plan and the UDO, and that they would further the County's land use planning objectives and policies as set out in these documents, as well as the health, safety, welfare and economic well being of the County.

16. The County has also determined that the above-described subdivisions and developments present a unique opportunity for the County to secure quality planning and growth, to protect the environment, to strengthen the tax base and to acquire public amenities through the development approval process.

Accordingly, Crescent, Carolina Centers, Key Harbor and the County desire to enter into this Agreement for the purposes of (a) agreeing upon the maximum density of development on the relevant parcels of land and the types of uses thereon; (b) coordinating the construction of infrastructure that will serve the above-described subdivisions and developments and the community at large; (c) confirming the dedication and/or provision of the public amenities described herein by Crescent and Key Harbor; and (d) providing assurances to Key Harbor and Crescent that they may proceed with the development of their relevant parcels of land in accordance with the approved conditional rezoning plans described below and the terms of this Agreement without encountering future changes in ordinances, regulations or policies that would affect their ability to develop the relevant parcels under the approved conditional rezoning plans and the terms hereof.

## TERMS

NOW, THEREFORE, based upon the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, the parties do hereby agree as follows:

1. Public Hearing. Pursuant to Section 153A-349.5 of the North Carolina General Statutes, the Board of Commissioners conducted a public hearing on April 16, 2007 to consider the approval and execution of this Agreement in accordance with the procedures in N.C.G.S. 153A-323. The notice of public hearing specified, among other things, the location of the parcels of land subject to this Agreement, the development uses proposed on the parcels of land and a place where a copy of the Agreement can be obtained. The Board of Commissioners approved this Agreement and the County's execution of the same.

2. Term. The term of this Agreement shall commence on the date that all parties hereto have executed the Agreement and it shall terminate twenty (20) years thereafter unless sooner



terminated by the mutual consent of the parties hereto or their successors in interest, or unless extended by the mutual consent of the parties hereto or their successors in interest.

3. Development of the Property.

A. Key Harbor Property

On April 16, 2007, the Board of Commissioners rezoned the Key Harbor Property to the Planned Development zoning district to permit the development of the Key Harbor Subdivision. The Key Harbor Property shall be developed in accordance with the terms and conditions of the conditional rezoning plan approved by the Board of Commissioners in connection with the rezoning of the Key Harbor Property (the "Approved Key Harbor Plan"). The sizes, placements and configurations of the lots, common open space, streets, sidewalks and other improvements planned for the Key Harbor Subdivision shall be as depicted on the Approved Key Harbor Plan or as described in the development standards set out on the Approved Key Harbor Plan subject, however, to any rights Key Harbor may have to make adjustments to the same as provided on the Approved Key Harbor Plan, and to Key Harbor's right to seek minor amendments to the Approved Key Harbor Plan pursuant to Section 44-327(k) of the UDO.

As provided on the Approved Key Harbor Plan, the minimum front and rear yard setbacks for dwelling units located within the Key Harbor Subdivision shall be twenty (20) feet. Side yard setbacks for dwelling units located within Key Harbor on lots with a width of sixty four (64) feet or less shall be zero (0) feet, provided, however, that the minimum building separation shall be seven and one-half (7.5) feet. Side yard setbacks for dwelling units located within Key Harbor on lots with a width of sixty five (65) feet to eighty four (84) feet shall be zero (0) feet, provided, however, that the minimum building separation shall be ten (10) feet. Side yard setbacks for dwelling units located on lots with a width of eighty five (85) feet or greater shall be ten (10) feet, and there shall be no minimum building separation other than the side yard setback requirement.

In the event of a conflict between the UDO and the Approved Key Harbor Plan, the terms of the Approved Key Harbor Plan shall govern.

B. Village Center Property

On April 16, 2007, the Board of Commissioners rezoned the Village Center Property to the Planned Development zoning district to permit the development of the Village Center Project. The Village Center Property shall be developed in accordance with the terms and conditions of the conditional rezoning plan approved by the Board of Commissioners in connection with the rezoning of the Village Center Property (the "Approved Village Center Plan"). The configurations, placements and sizes of the lots, buildings, open space, parking areas, streets and other improvements planned for the Village Center Project shall be as depicted on the Approved Village Center Plan or as described in the development standards set out on the Approved Village Center Plan subject, however, to any rights Crescent may have to make adjustments to the same as provided on the Approved Village Center Plan, and to

Crescent's right to seek minor amendments to the Approved Village Center Plan pursuant to Section 44-327(k) of the UDO.

In the event of a conflict between the UDO and the Approved Village Center Plan, the terms of the Approved Village Center Plan shall govern.

C. Terrapin Creek Property

The Terrapin Creek Property shall be developed as a low density conservation subdivision containing a maximum of 100 single family lots. The Terrapin Creek Subdivision shall be developed in accordance with and shall satisfy the standards and requirements of the UDO. The Terrapin Creek Subdivision must be reviewed and approved by the Catawba County Subdivision Review Board. Attached hereto as Exhibit I and incorporated herein by reference is a site plan for concept purposes only illustrating the type of development to be allowed on the Terrapin Creek Property.

D. Mountain Creek Property

The Mountain Creek Property shall be utilized and/or developed as provided in Section 9 under "Background".

4. Permitted Uses/Maximum Density/Placement and Types of Buildings.

A. Key Harbor Property

The Key Harbor Property shall be devoted to single family detached homes, attached single family homes and related amenities together with any incidental or accessory uses associated therewith which are permitted under the UDO in the Planned Development zoning district. As more particularly depicted on the Approved Key Harbor Plan, a maximum of 1,500 dwelling units may be developed on the Key Harbor Property, of which a minimum of 40 dwelling units and a maximum of 100 dwelling units may be attached single family homes.

B. Village Center Property

The Village Center Property may be devoted to retail, office, governmental, educational and service uses and to single family detached or attached residential uses or multi-family attached residential uses together with any incidental or accessory uses associated therewith which are permitted under the UDO in the Planned Development District zoning district. As more particularly provided on the Approved Village Center Plan, the maximum floor area for the retail/service and office uses and the maximum number of residential units that may be developed on the Village Center Property are as follows:

- |       |                         |                      |
|-------|-------------------------|----------------------|
| (i)   | Retail/service:         | 500,000 square feet; |
| (ii)  | Office:                 | 300,000 square feet; |
| (iii) | Single family detached: | 250 dwelling units;  |

- (iv) Attached single family  
(i.e. townhomes): 200 dwelling units; and
- (v) Multi-family  
(i.e. apartments and condominiums): 400 dwelling units.

Subject to the approval of the Catawba County Planning Staff (the 'Staff'), which approval shall not be unreasonably withheld or delayed, Crescent may shift allowed floor area from retail/service uses to office uses, and from office uses to retail/service uses provided that any such shift of floor area is neutral from a traffic impact standpoint. Subject to the approval of the Staff, which approval shall not be unreasonably withheld or delayed, Crescent may also shift allowed residential units between the various types of allowed residential uses provided that such shift is neutral from a traffic impact standpoint.

The placement of the buildings on the Village Center Property and the types of buildings are more particularly depicted on the Approved Village Center Plan.

C. Terrapin Creek Property

The Terrapin Creek Property shall be devoted to single family detached homes together with any incidental or accessory uses associated therewith which are permitted under the UDO, and to conservation and open space. A maximum of 100 single family detached homes on individual lots may be developed on the Terrapin Creek Property. The Terrapin Creek Subdivision shall be developed in accordance with and shall satisfy the standards and requirements of the UDO. The Terrapin Creek Subdivision must be reviewed and approved by the Catawba County Subdivision Review Board.

D. Mountain Creek Property

The Mountain Creek Property shall be utilized and/or developed in accordance with the densities and uses described above in Section 9 under "Background".

5. Development Schedule. The Key Harbor Property and the Village Center Property shall be developed in accordance with the development schedules set out in subsections 5.A. and 5.B. below, or as may be amended by the agreement of the parties to reflect actual market absorption. The Terrapin Creek Property and the Mountain Creek Property shall not be subject to any development schedule, and shall be developed at a schedule to be determined in the discretion of the developer. Pursuant to N.C.G.S. 153A-349.6(b) of the North Carolina General Statutes, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of this Agreement pursuant to N.C.G.S. 153A-349.8 but must be judged based upon the totality of the circumstances, including, but not limited to, Key Harbor's and/or Crescent's good faith efforts to attain compliance with the relevant development schedule. The development schedule is a budget planning tool and shall not be interpreted as mandating the development pace initially forecast or preventing a faster pace of development if market conditions support a faster pace. Periodic adjustments to the relevant development schedule by Key Harbor shall not be considered to be a material amendment or breach of this Agreement as long as (1) Key Harbor, or its successor in interest, pays the water and sewer

capital fees in accordance with the required schedule as set out in Section 12 hereof, and (2) the entire 1,500 lots are developed within the twenty (20) year period described below.

A. Key Harbor Property Development Schedule

(i) Within five (5) years of the Sewer Availability Date (the Sewer Availability Date being defined in Paragraph 11.A.(i) below), Key Harbor shall have completed the development of at least 375 lots;

(ii) Within ten (10) years of the Sewer Availability Date, Key Harbor shall have completed the development of at least 750 lots;

(iii) Within fifteen (15) years of the Sewer Availability Date, Key Harbor shall have completed the development of at least 1,125 lots; and

(iv) Within twenty (20) years of the Sewer Availability Date, Key Harbor shall have completed the development of at least 1,500 lots.

Notwithstanding anything contained herein to the contrary, Key Harbor may develop lots at a faster pace than the pace provided above in subparagraphs (i) through (iv). The failure of Key Harbor to meet the minimum development schedule set out above in subparagraphs (i) through (iv) shall not constitute a breach of this Agreement provided that Key Harbor pays the water and sewer capital fees required under Section 12 of this Agreement in accordance with the schedule set out therein and develops 1,500 lots within twenty (20) years of the Sewer Availability Date.

B. Village Center Property Development Schedule

(i) Within four (4) years and two (2) months of the Sewer Availability Date, Crescent shall complete the development of at least 125,000 square feet of the retail component of the Village Center Project;

(ii) Within six (6) years and two (2) months of the Sewer Availability Date, Crescent shall complete the development of the remaining portion of the retail component of the Village Center Project;

(iii) Within six (6) years and two (2) months of the Sewer Availability Date, Crescent shall commence the development of the medical office component of the Village Center Project, and the development of the medical office component of the Village Center Project shall be completed within nine (9) years and two (2) months of the Sewer Availability Date; and

(iv) Within four (4) years and two (2) months of the Sewer Availability Date, Crescent shall commence the development of the residential component of the Village Center Project, and the development of the residential component of the Village Center Project shall be completed within nine (9) years and two (2) months of the Sewer Availability Date. From and after the commencement of the construction of the first residential unit in the residential

component of the Village Center Project, a minimum of thirty (30) residential units shall be constructed during each subsequent twelve (12) month period.

C. Terrapin Creek Property Development Schedule

The Terrapin Creek Property shall not be required to develop according to a schedule.

D. Mountain Creek Property Development Schedule

The Mountain Creek Property retained by Crescent shall not be developed according to a schedule.

6. Law in Effect at Time of the Agreement Governs the Development of Each Relevant Parcel.

A. Key Harbor Property

The laws applicable to the development of the Key Harbor Property and the Key Harbor Subdivision are those in force as of the date of this Agreement. Accordingly, Key Harbor and its successors in interest shall have a vested right to develop the Key Harbor Property and the Key Harbor Subdivision in accordance with the Approved Key Harbor Plan, the terms of this Agreement, and the terms of the UDO and any applicable laws and regulations as they exist as of the date hereof during the entire term of this Agreement. Pursuant to N.C.G.S. 153A-349.7(b) and except as provided in N.C.G.S. 153A-344.1(e), the County may not apply subsequently adopted ordinances or development policies to the Key Harbor Property or to the Key Harbor Subdivision during the term of this Agreement without the written consent of Key Harbor or its successors in interest. Additionally, no future development moratoria or development impact fees shall apply to the Key Harbor Property or to the Key Harbor Subdivision without the written consent of Key Harbor or its successors in interest. This Agreement does not abrogate any rights preserved by N.C.G.S. 153A-344 or N.C.G.S. 153A-344.1, or that may vest pursuant to common law or otherwise in the absence of this Agreement.

B. Village Center Property

The laws applicable to the development of the Village Center Property and the Village Center Project are those in force as of the date of this Agreement. Accordingly, Crescent and its successors in interest shall have a vested right to develop the Village Center Property and the Village Center Project in accordance with the Approved Village Center Plan, the terms of this Agreement, and the terms of the UDO and any applicable laws and regulations as they exist as of the date hereof during the entire term of this Agreement. Pursuant to N.C.G.S. 153A-349.7(b) and except as provided in N.C.G.S. 153A-344.1(e), the County may not apply subsequently adopted ordinances or development policies to the Village Center Property or to the Village Center Project during the term of this Agreement without the written consent of Crescent or its successors in interest. Additionally, no future development moratoria or development impact fees shall apply to the Village Center Property or to the Village Center Project without the written consent of Crescent or its successors in interest. This Agreement does not abrogate any

rights preserved by N.C.G.S. 153A-344 or N.C.G.S. 153A-344.1, or that may vest pursuant to common law or otherwise in the absence of this Agreement.

C. Terrapin Creek Property and Mountain Creek Property

The laws applicable to the development of the Terrapin Creek Property and the Mountain Creek Property are those in force as of the date of this Agreement. Accordingly, Crescent and its successors in interest shall have a vested right to develop the Terrapin Creek Property and the Mountain Creek Property in general conformity with the provisions and terms of this Agreement, and the terms of the UDO and any applicable laws and regulations as they exist as of the date hereof during the entire term of this Agreement. Pursuant to N.C.G.S. 153A-349.7(b) and except as provided in N.C.G.S. 153A-344.1(e), the County may not apply subsequently adopted ordinances or development policies to the Terrapin Creek Property or to the Mountain Creek Property during the term of this Agreement without the written consent of Crescent or its successors in interest. Additionally, no future development moratoria shall apply to the Terrapin Creek Property or to the Mountain Creek Property without the written consent of Crescent or its successors in interest. Notwithstanding the foregoing, the Terrapin Creek Property and the Mountain Creek Property shall be subject to future development impact fees if legally adopted by the Board of Commissioners and provided that such development impact fees apply on a county wide basis. This Agreement does not abrogate any rights preserved by N.C.G.S. 153A-344 or N.C.G.S. 153A-344.1, or that may vest pursuant to common law or otherwise in the absence of this Agreement.

7. Transportation Improvements.

A. Key Harbor Property

Subject to the approval of the North Carolina Department of Transportation ("NCDOT"), Key Harbor, or its successor in interest, shall, at its sole cost and expense, install all of the off-site transportation improvements that are recommended to be installed by the developer of the Key Harbor Property in a Traffic Impact Analysis Technical Addendum dated March 3, 2006 prepared by Chas. H. Sells, Inc. (the "Key Harbor TIA"). The Key Harbor TIA has been reviewed and approved by NCDOT. The off-site transportation improvements to be installed by the developer of the Key Harbor Property shall include the following:

- (i) Dedicated turn lanes and re-configured signal timing at the intersection of Highway 150 and Sherrills Ford Road;
- (ii) Dedicated turn lanes and signal installation at the intersection of Sherrills Ford Road and Island Point Road;
- (iii) Signal installation and dedicated turn lanes at the intersection of Sherrills Ford Road and Slanting Bridge Road;
- (iv) Signal installation and dedicated turn lanes at the intersection of Sherrills Ford Road and Molly's Backbone Road; and

(v) Dedicated turn lanes and re-configured signal timing at the intersection of Highway 150 and Slanting Bridge Road.

The off-site transportation improvements described above in subparagraphs (i) through (v) and any other off-site transportation improvements required by NCDOT shall be installed in accordance with the schedule set out in the phasing analysis approved by NCDOT, and such off-site transportation improvements shall be installed in accordance with the specifications of NCDOT. If Key Harbor, or its successor in interest, fails to install any of the required off-site transportation improvements in accordance with the terms of the approved phasing analysis, then the County may, at its option, 1) withhold the issuance of any further building permits for homes within Key Harbor and/or 2) withhold the issuance of certificates of occupancy for any homes within Key Harbor that have not been purchased or have not been placed under contract for sale until such time as the delinquent off-site transportation improvements are completed. Subsequently placing a home under contract shall not remove the hold on its certificate of occupancy.

Catawba County hereby agrees to request NCDOT to consider lower speed limits on Island Point Road, Azalea Road and Molly's Backbone Road.

B. Village Center Property

(i) Crescent has caused to be prepared by Kubilins Transportation Group, Inc. a Traffic Impact Analysis for the Village Center Project (the "Crescent TIA"). The Crescent TIA is currently being reviewed by NCDOT and is subject to its approval. Crescent, or its successor in interest, shall, at its sole cost and expense, install all of the off-site transportation improvements that are recommended to be installed by the developer of the Village Center Project in the Crescent TIA as approved by NCDOT. The off-site transportation improvements that are recommended to be installed by the developer of the Village Center Project shall be installed in accordance with the schedule set out in the phasing analysis recommended by the Crescent TIA as approved by NCDOT, and such off-site transportation improvements shall be installed in accordance with the specifications of NCDOT. If Crescent, or its successor in interest, fails to install any of the required off-site transportation improvements in accordance with the terms of the approved phasing analysis, then the County may, at its option, withhold the issuance of any further building permits or certificates of occupancy for the Village Center Property until such time as the delinquent off-site transportation improvements are completed.

(ii) Within thirty (30) days of the date of the approval of the Crescent TIA by NCDOT, Crescent shall dedicate right of way to NCDOT for the widening of Highway 150, which right of way area is more particularly depicted on Exhibit J.

8. Condemnation of Right of Way for Off-Site Transportation Improvements.

A. Key Harbor Property

Key Harbor shall exert reasonable and good faith efforts to obtain from the relevant property owners, at its sole cost and expense, the right of way necessary to construct and install the required off-site transportation improvements described above. In the event that Key Harbor is unable to obtain any of the required right of way after exerting reasonable, good faith

efforts to do so, the County will obtain the required right of way by purchasing the same or through eminent domain proceedings. In the event that the County purchases any required right of way, Key Harbor shall reimburse the County for the purchase price and any expenses related thereto. In the event that the County acquires any required right of way through eminent domain proceedings, Key Harbor shall reimburse the County for any award of just compensation and/or damages (as determined through settlement or verdict), including interest, that the County is required to pay, and for appraisal fees, attorney's fees and other costs and expenses incurred by the County in connection therewith. Key Harbor shall not be liable, however, for payments through settlement in excess of appraised value unless it has given its prior consent.

B. Village Center Property

Crescent shall exert reasonable and good faith efforts to obtain from the relevant property owners, at its sole cost and expense, the right of way necessary to construct and install the required off-site transportation improvements described above. In the event that Crescent is unable to obtain any of the required right of way after exerting reasonable, good faith efforts to do so, the County will obtain the required right of way by purchasing the same or through eminent domain proceedings. In the event that the County purchases any required right of way, Crescent shall reimburse the County for the purchase price and any expenses related thereto. In the event that the County acquires any required right of way through eminent domain proceedings, Crescent shall reimburse the County for any award of just compensation and/or damages (as determined through settlement or verdict), including interest, that the County is required to pay, and for appraisal fees, attorney's fees and other costs and expenses incurred by the County in connection therewith. Crescent shall not be liable, however, for payments through settlement in excess of appraised value unless it has given its prior consent.

C. Authority to Condemn

The County represents and warrants that it has the legal authority to acquire the right of way areas described above through eminent domain proceedings in accordance with the terms of this Agreement pursuant to 1989 N.C. General Assembly Session Laws, Senate Bill 620.

9. Reservations or Dedications of Land for Public Purposes/Public Improvements by Key Harbor and Crescent.

A. Key Harbor

(i) Bike Path. Within three (3) years of the date on which the Key Harbor Property is rezoned to the Planned Development zoning district and subject to the approval of NCDOT and the availability of right of way, Key Harbor shall install, at its sole cost and expense, a paved bike path along the northern side of Island Point Road extending from the intersection of Island Point Road and Sherrill's Ford Road to the easternmost edge of the Key Harbor Subdivision's frontage on Island Point Road (the "Bike Path"). The Bike Path shall vary in width from 5 feet to 8 feet, and it may meander at the discretion of Key Harbor to save trees. In the event that NCDOT fails to approve the Bike Path, then Key Harbor shall have no obligation to install the Bike Path. Additionally, Key Harbor shall have no obligation to install any portion



of the Bike Path where there is no existing right of way to accommodate such portion of the Bike Path.

(ii) Sherrills Ford Elementary School Improvements. In the event that the Key Harbor Property is rezoned to the Planned Development zoning district to permit the development of the Key Harbor Subdivision on or before April 17, 2007, then Key Harbor, at its sole cost and expense, shall re-configure and improve the Sherrills Ford Elementary School parking area prior to July 31, 2007 as described in the Key Harbor TIA and as depicted on Exhibit K attached hereto and incorporated herein by reference. Key Harbor shall coordinate the installation of these improvements with the Catawba County Board of Education (the "Board of Education") so as to minimize any inconvenience to Sherrills Ford Elementary School during the construction process. In the event that the Key Harbor Property is rezoned after April 17, 2007, then the improvements to the Sherrills Ford Elementary School shall be completed on a schedule mutually agreed upon among the Board of Education, Sherrills Ford Elementary School and Key Harbor, but in no event later than July 31, 2008.

(iii) Park Site. On or before May 15, 2007, Key Harbor shall acquire an approximately 22 acre parcel of land located adjacent to the northern boundary line of the Key Harbor Subdivision (the "Key Harbor Park Site"). The Key Harbor Park Site is more particularly depicted on the Approved Key Harbor Plan. On or before May 18, 2008, Key Harbor shall donate and convey to the Sherrills Ford Optimist Club the Key Harbor Park Site for use as a public park. Key Harbor shall not be required to construct or to fund any of the park's internal improvements or amenities. The deed of conveyance from Key Harbor to the Sherrills Ford Optimist Club shall restrict the use of the Key Harbor Park Site to park and recreational purposes. The County shall provide a letter to Key Harbor confirming the donation of the Key Harbor Park Site for tax purposes. Key Harbor shall lease the Key Harbor Park Site to the Sherrills Ford Optimist Club beginning on May 15, 2007 until the date title is conveyed at a sum not to exceed \$10 per year, provided that the Sherrills Ford Optimist Club agrees to hold Key Harbor harmless from and against any and all causes of action and liabilities arising in tort.

(iv) Terrell General Store. Key Harbor shall exert reasonable and good faith efforts to obtain from the relevant property owner(s), at its sole cost and expense, the parcel or parcels of land on which the Terrell General Store is currently located (the "Terrell General Store Site"). In the event that Key Harbor is able to acquire the Terrell General Store Site, then Key Harbor shall make reasonable and good faith efforts to relocate the Terrell General Store building from its present location on the Terrell General Store Site to another suitable location on the Terrell General Store Site. Such suitable location cannot interfere with any required off-site transportation improvements. In the event that a suitable location is found for the relocation of the Terrell General Store building, then Key Harbor shall relocate the Terrell General Store building to the suitable location at its sole cost and expense. Key Harbor will then be entitled to pursue the commercial rezoning and development of the Terrell General Store Site.

In the event that a suitable location on the Terrell General Store Site for the relocation of the Terrell General Store building cannot be located, then Key Harbor shall offer the Terrell General Store building to the County at no charge, and if the County accepts such offer, the County shall relocate the Terrell General Store building to another location at its sole cost and expense within a reasonable period of time. If the County does not accept such offer, then Key

Harbor may dispose of the Terrell General Store building. In either event, Key Harbor may then pursue the commercial rezoning and development of the Terrell General Store Site.

In the event that Key Harbor is unable to acquire the Terrell General Store Site after exerting reasonable and good faith efforts to do so, then Key Harbor shall have satisfied its obligations hereunder.

(v) Public Sidewalks. Key Harbor shall construct a 5 foot public sidewalk on at least one side of each public street located within the Key Harbor Subdivision. This sidewalk system shall connect to the Bike Path on Island Point Road. More specifically, a public sidewalk shall be constructed on both sides of any portion of a public street where dwelling units are located on each side of the public street, and a public sidewalk shall be constructed only on the dwelling unit side of a portion of any public street where dwelling units are located on only one side of the public street. With respect to the open space areas within the Key Harbor Subdivision, a public sidewalk shall be constructed on only one side of any public street located in these areas. Key Harbor shall construct a public sidewalk adjacent to each lot after the dwelling unit is constructed thereon to prevent damage to the public sidewalk during the construction of the dwelling unit, and Key Harbor shall construct public sidewalks in the open space areas at such times as these areas are developed.

The internal trail system to be constructed within the Key Harbor Subdivision shall be constructed of pervious materials, which materials shall consist of mulch, gravel or stone at Key Harbor's discretion, but subject to Planning Staff approval, such approval not to be unreasonably withheld.

(vi) Amenity. Key Harbor shall construct at least two swimming pools and at least two clubhouses within the Key Harbor Subdivision.

B. Crescent

(i) School Site. Crescent shall reserve an approximately 25 acre site located within the Village Center Property that is more particularly identified on the Approved Village Center Plan for a public school site (the "School Site"). Unless extended as provided below, the School Site shall be reserved for a public school for a period of thirteen (13) years, with such thirteen (13) year period commencing on the date that the Village Center Property is rezoned to accommodate the Village Center Project and expiring thirteen (13) years thereafter (the "School Reservation Period"). During the School Reservation Period, the School Site may not be used for any purpose that is inconsistent with the reservation thereof for a public school. The School Site may be used, however, as a construction staging area or other use approved by the County.

If the Board of Education approves the School Site for a public school within the School Reservation Period, then Crescent shall donate and convey to the Board of Education as much of the School Site that is required to accommodate a public school as determined by the Board of Education within ninety (90) days of Crescent's receipt of written notice of the County's approval of the School Site. The deed of conveyance shall restrict the use of the School Site to a public school. Any portion of the School Site that is not required for the public school, as determined by the Board of Education, shall be retained by Crescent free and clear of the

reservation, and Crescent may pursue the rezoning and development of the relevant portion of the School Site.

If the Board of Education fails to approve the School Site for a public school within the School Reservation Period, then the reservation shall expire and Crescent may pursue the rezoning and development of the School Site.

At any time during the School Reservation Period, the Board of Education may extend the School Reservation Period for an additional three (3) years upon written notice to Crescent provided that the public school proposed for the School Site is approved for construction during the 2019-2023 funding cycle.

If the Board of Education approves a public school site in another location in the Sherrills Ford area within the School Reservation Period and releases the School Site from the reservation, then Crescent shall contribute to the County an amount equal to the fair market value of the School Site as rezoned to the Planned Development zoning district as of the date of the rezoning of the Village Center Property to accommodate the development of the school at the alternate site. Crescent and the County agree that the fair market value of the School Site based upon the Approved Village Center Plan and as rezoned as of the date of the rezoning of the Village Center Property shall be determined by employing two separate appraisers with MAI credentials to conduct separate “blind” appraisals. Crescent and the County shall each select one appraiser, but the costs of each appraisal shall be paid by Crescent. The higher appraisal shall determine the amount of the School Payment. The School Payment shall be paid by Crescent to the County within one hundred and twenty (120) days of Crescent’s receipt of written notice of the Board of Education’s approval of the alternate site for a public school in the Sherrills Ford area and the release of the School Site from the reservation. Crescent shall then be permitted to pursue the rezoning and development of the School Site.

If the Board of Education approves the School Site for a public school within the School Reservation Period and Crescent fails to donate and convey to the County the School Site as described above, or, alternatively, if Crescent fails to pay the School Payment as described above, then the County may, in its discretion, withhold any or all building permits and/or certificates of occupancy for the Village Center Project until Crescent donates and conveys to the County the School Site or, alternatively, pays to the County the School Payment in full. Additionally, the County may sue Crescent for the specific performance of these obligations.

In no event shall Crescent be responsible for the construction of any improvements required for access to the School Site or for the development and use of the School Site or for any costs related thereto.

(ii) Service Center. Crescent shall donate and convey to the County an approximately two (2) acre site located within the Village Center Property that is more particularly identified on the Approved Village Center Plan for a satellite service center for County services, including, but not limited to, the Catawba County Sheriff’s Department, Catawba County Emergency Services, the Catawba County Public Library or other County services (the “Service Center Site”). The deed of conveyance shall restrict the use of the Service Center Site to County services. The Service Center Site shall be donated and conveyed to the County prior to that date which is four (4) years and two (2) months after the Sewer Availability

Date (the Sewer Availability Date being defined in Paragraph 11.A.(i) below). Crescent shall also donate and contribute to the County the sum of \$750,000 to be utilized for construction costs and/or the purchase of emergency services equipment prior to that date which is four (4) years and two (2) months after the Sewer Availability Date.

If Crescent fails to donate and convey to the County the Service Center Site or to pay to the County the full sum of \$750,000 as described above, then the County may, in its discretion, withhold any or all building permits and/or certificates of occupancy for the Village Center Project until Crescent donates and conveys to the County the Service Center Site and pays the \$750,000 in full. Additionally, the County may sue Crescent for the specific performance of these obligations.

In no event shall Crescent be responsible for the construction of any improvements required for access to the Service Center Site or for the development and use of the Service Center Site or for any costs related thereto.

(iii) YMCA Site. Crescent shall reserve an approximately ten (10) acre site located within the Village Center Property that is more particularly identified on the Approved Village Center Plan for purchase by the YMCA (the "YMCA Site"). The YMCA Site shall be reserved for purchase by the YMCA for a period of three (3) years, with such three (3) year period commencing on the date of the issuance of the first building permit for the Village Center Property and expiring three (3) years thereafter (the "YMCA Reservation Period"). To exercise its option to purchase the YMCA Site, the YMCA must notify Crescent in writing that it will purchase the YMCA Site and the parties must enter into a written contract for the same within the YMCA Reservation Period. Should the YMCA fail to exercise its option to purchase the YMCA Site within the YMCA Reservation Period, then the reservation shall expire and Crescent may pursue the rezoning and development of the YMCA Site.

The purchase price for the YMCA Site shall be the lesser of (i) the fair market value of the YMCA Site as of the date that the YMCA exercises its option to purchase the same as determined by a third party appraisal procured by Crescent or (ii) \$50,000 per acre.

The purchase contract between Crescent and the YMCA shall contain a provision that provides that in the event that the YMCA does not begin construction of its facility on the YMCA Site within five (5) years of the date that it acquires the YMCA Site, then Crescent may purchase the YMCA Site from the YMCA for the purchase price paid by the YMCA. In this event, Crescent may pursue the rezoning and development of the YMCA Site.

In no event shall Crescent be responsible for the construction of any improvements required for access to the YMCA Site or for the development and use of the YMCA Site or for any costs related thereto.

(iv) Catawba County Medical Center. Crescent shall reserve an approximately ten (10) acre site located within the Village Center Property that is more particularly identified on the Approved Village Center Plan for purchase by the Catawba County Medical Center (the "Medical Center Site"). The Medical Center Site shall be reserved for purchase by the Catawba County Medical Center for a period of three (3) years, with such three (3) year period commencing on the date of the issuance of the first building permit for the Village Center

Property and expiring three (3) years thereafter (the “Medical Center Reservation Period”). To exercise its option to purchase the Medical Center Site, the Catawba County Medical Center must notify Crescent in writing that it will purchase the Medical Center Site and the parties must enter into a written contract for the same within the Medical Center Reservation Period. Should the Catawba County Medical Center fail to exercise its option to purchase the Medical Center Site within the Medical Center Reservation Period, then the reservation shall expire and Crescent may pursue the rezoning and development of the Medical Center Site.

The purchase price for the Medical Center Site shall be the lesser of (i) the fair market value of the Medical Center Site as of the date that the Catawba County Medical Center exercises its option to purchase the same as determined by a third party appraisal procured by Crescent or (ii) \$50,000 per acre.

The purchase contract between Crescent and the Catawba County Medical Center shall contain a provision that provides that in the event that the Catawba County Medical Center does not begin construction of its facility within five (5) years of the date that it acquires the Medical Center Site, then Crescent may purchase the Medical Center Site from the Catawba County Medical Center for the purchase price paid by the Catawba County Medical Center. In this event, Crescent may pursue the rezoning and development of the Medical Center Site.

In no event shall Crescent be responsible for the construction of any improvements required for access to the Medical Center Site or for the development and use of the Medical Center Site or for any costs related thereto.

(v) Pump Stations. If suitable locations can be located on any of its parcels of land, Crescent shall donate and convey the relevant portions of these parcels of land to the County for the construction, operation and maintenance of any pump stations that are required to serve the Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property. Crescent shall also dedicate any easements over and across its parcels of land that are required to install and maintain sewer lines from the pump stations to the Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property. To the extent that it is legally permissible and physically feasible to locate a sewer pump station on land owned by Duke Power in Iredell County, Crescent shall request Duke Power to donate land in Iredell County for this purpose. It is understood by the parties hereto that the decision to donate such land or not is entirely within the discretion of Duke Power, and Duke Power’s refusal to donate such land shall not be deemed to be a breach of this Agreement by Crescent. All costs and expenses associated with or relating to the installation, maintenance and use of the pump stations described above and any related sewer lines shall be borne solely by the County.

10. Key Harbor Restrictive Covenants. Key Harbor shall impose on the Key Harbor Subdivision restrictive covenants that are not less restrictive than the restrictive covenants of record as of the date hereof that are imposed against the Northview Harbor Subdivision.

11. Public Sewer and Water.

A. Sewer

(i) The County shall, at its sole cost and expense, provide public sewer to the Key Harbor Property and the Village Center Property on or before that date which is ten (10) months after the date on which all parties execute this Agreement and the rezoning of the Key Harbor Property and the Village Center Property are approved by the Board of Commissioners (such date being hereinafter referred to as the "Sewer Availability Date"), and the County warrants and represents that public sewer will be available to the Key Harbor Property and the Village Center Property on or before the Sewer Availability Date.

(ii) In connection with the provision of public sewer to the Key Harbor Property and the Village Center Property, the County shall, at its sole cost and expense, construct, install and maintain a pump station and a force main of sufficient size and capacity necessary to provide gravity sewer to the entire Key Harbor Property. Additionally, the County shall, at its sole cost and expense, construct, install and maintain a pump station and a force main of sufficient size and capacity necessary to provide gravity sewer to the entire Village Center Property.

(iii) In the event that lots are developed within the Key Harbor Subdivision and homes are constructed thereon and ready for occupancy prior to the Sewer Availability Date, then the County agrees, at its sole cost and expense, to pump and haul sewage for each such home from a central location on the Key Harbor Property that is mutually agreed upon by the County and Key Harbor and that is provided by Key Harbor until such time as public sewer is actually available. Pump and haul arrangements shall be subject to all superseding state and federal laws and regulations. All required permits and approvals shall be the responsibility of the County to obtain and the County will diligently pursue the issuance of all required permits and approvals.

(iv) The County shall approve plats, issue land disturbing, building and other permits, authorize water and sewer taps and issue certificates of occupancy for homes in Key Harbor that are constructed prior to the availability of public sewer. The issuance of permits and certificates of occupancy shall be in accordance with State law but shall not be withheld because of any pump and haul arrangement.

(v) In the event that the County does not actually provide public sewer to the Key Harbor Property by the Sewer Availability Date, then the County agrees thereafter, at its sole cost and expense, to pump and haul sewage from the Key Harbor Property from a central location on the Key Harbor Property that is mutually agreed upon by the County and Key Harbor for any and all homes located or to be located within the Key Harbor Property until such time as public sewer is actually available to the Key Harbor Property.

(vi) The sewer systems for the Key Harbor Property and the Village Center Property shall be designed to the City of Hickory's specifications and subject to the City of Hickory connection charges.

(vii) The sewer systems for the Key Harbor Property and the Village Center Property shall be approved by the County, the City of Hickory and NCDENR.

(viii) With respect to any public utility lines required to be installed by Key Harbor or Crescent, the County agrees to exercise its power of eminent domain to acquire any easements required for such public utilities to serve the Key Harbor Property and/or the Village Center

Property if Key Harbor and/or Crescent are unable to acquire the same after having exercised reasonable and good faith efforts to do so. The procedures described in Paragraph 8 above shall be followed in connection with the County's exercise of its power of eminent domain.

B. Water

(i) The County represents and warrants that public water is currently available to the Key Harbor Property and the Village Center Property. Public water can be made available at Crescent's expense to the Terrapin Creek Property and the Mountain Creek Property.

(ii) The water systems shall be designed to the City of Hickory's specifications and subject to the City of Hickory connection charges.

(iii) The water systems shall be approved by the County, the City of Hickory and NCDENR.

12. Water and Sewer Capital Fees. The County's fiscal year runs from July 1 through June 30. Commencing with the County's fiscal year in which the Sewer Availability Date occurs and in accordance with the schedule set out below and on Exhibit L attached hereto and incorporated herein by reference, Key Harbor shall pay to the County the standard per lot water and sewer capital fees charged by the County for each of the 1,500 lots planned to be developed on the Key Harbor Property.

Specifically, commencing in the County's fiscal year in which the Sewer Availability Date occurs and continuing thereafter during each County fiscal year until such time as the water and sewer capital fees are paid for each of the 1,500 lots planned to be developed on the Key Harbor Property, Key Harbor shall pay water and sewer capital fees to the County based upon the actual number of lots developed and permitted on the Key Harbor Property during each County fiscal year or based upon one hundred and fifty (150) lots per County fiscal year, whichever is greater. During each County fiscal year, water and sewer capital fees shall be paid on an approved lot basis at the time of the issuance of a building permit for each lot.

If Key Harbor does not develop and obtain a building permit for at least one hundred and fifty (150) lots in any County fiscal year prior to the payment of the per lot water and sewer capital fees for each of the 1,500 lots planned to be developed on the Key Harbor Property, then Key Harbor shall pay to the County the shortfall in water and sewer capital fees within thirty (30) days after June 30, the end of the County fiscal year. Within fifteen (15) days of the end of each County fiscal year, Key Harbor and the County shall reconcile their records to determine what, if any, shortfall actually exists. If Key Harbor develops and permits more than one hundred and fifty (150) lots in any County fiscal year, then the number of developed and permitted lots in excess of one hundred and fifty (150) shall be credited to future County fiscal year lot requirements. The initial per lot water capital fee shall be \$1,000 and the initial per lot sewer capital fee shall be \$3,000. Water and sewer capital fee rates shall be subject to the water and sewer rate schedules adopted annually by the Board of Commissioners.

Notwithstanding the foregoing, planned lots for which water and sewer capital fees are required to be paid pursuant to the schedule set out above but for which building permits have not been issued prior to June 30 of the relevant County fiscal year shall be subject to higher

water and sewer capital fee payments as set out on the schedule attached hereto as Exhibit L. For example, in fiscal year 1, the sewer capital fee for a planned lot for which a building permit has not been issued prior to June 30 shall be \$750 more than the standard sewer capital fee, and the water capital fee for such planned lot shall be \$250 more than the standard water capital fee. In fiscal year 4, the sewer capital fee for a planned lot for which a building permit has not been issued prior to June 30 shall be \$1,000 more than the standard sewer capital fee, and the water capital fee for such planned lot shall be \$500 more than the standard water capital fee. For the purposes of determining the amount of capital fee payments only, building permit issuance prior to June 30<sup>th</sup> of the relevant County fiscal year shall trigger the standard capital fee payments only if actual construction is begun within forty-five (45) days. Requesting building permits for lots not ready for home construction for the purpose of acquiring more favorable capital fee rates shall be considered a material breach of this Agreement.

13. Water and Sewer Capacity Reservation. In making plans for maintaining, upgrading and expanding the County's water and sewer systems in order to provide sufficient water treatment capacity and sewage treatment capacity for citizens of the County, the County shall take into account the homes and amenities planned for the Key Harbor Subdivision shown on the Approved Key Harbor Plan, and the commercial and residential development planned for the Village Center Project shown on the Approved Village Center Plan and shall reserve sufficient water treatment capacity and sewer treatment capacity within its water and sewer systems to supply adequate quantities of public water and sewer treatment services to the Key Harbor Subdivision and the Village Center Project to the extent necessary for Key Harbor and Crescent to construct and obtain certificates of occupancy for each of the homes, non-residential buildings and amenities planned for the Key Harbor Subdivision and the Village Center Project (the "Guaranteed Capacity"). The County shall maintain the Guaranteed Capacity for the term of this Agreement, unless this Agreement is terminated earlier pursuant to its terms.

14. Connection to the County's Sewer and Water System. Upon the request of Key Harbor or Crescent, the County agrees to permit the physical connection of the Key Harbor Property and the Village Center Property to the County's sewer system. Upon the request of Key Harbor or Crescent, the County agrees to permit the physical connection of the Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property to the County's water system.

15. Local Development Permits. In accordance with N.C.G.S. 153A-349.6(b), the following is a description or list of the local development permits approved or needed to be approved for the development of the Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property:

Zoning Authorization Permits

Soil Erosion Sedimentation Control Permits

Septic Tank/Well Permits

DOT Driveway Permits

DOT Encroachment Agreements

Building Permits.



The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve Key Harbor or Crescent of the necessity of complying with their permitting requirements, conditions, terms or restrictions.

16. Amendment. The terms of this Agreement may be amended by the mutual consent of the parties hereto or their successors in interest. A major modification of the terms of this Agreement shall follow the same procedures as required for the initial approval of this Agreement, which procedures shall include a public hearing. A minor amendment to the Approved Key Harbor Plan or to the Approved Village Center Plan pursuant to Section 44-327(k) of the UDO shall not be considered to be an amendment to this Agreement.

17. Recordation/Binding Effect. Within fourteen (14) days after the County enters into this Agreement, Key Harbor or Crescent shall record this Agreement in the Catawba County Public Registry. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties hereto.

18. Periodic Review.

(i) Pursuant to N.C.G.S. 153A-349.8, the Planning Director or other County Manager designee shall conduct a periodic review (the "Periodic Review") at least every 12 months, at which time Key Harbor or Crescent shall be required to demonstrate good faith compliance with the terms of this Agreement.

(ii) If, as a result of the Periodic Review, the County finds and determines that either Key Harbor or Crescent has committed a material breach of the terms or conditions of the Agreement, the County shall serve notice in writing, within a reasonable time after the Periodic Review, upon the defaulting party setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the defaulting party a reasonable time in which to cure the material breach.

(iii) If the defaulting party fails to cure the material breach within the time given, then the County unilaterally may terminate or modify the Agreement as to the defaulting party only, provided, however, that the notice of termination or modification or finding of breach may be appealed to the Catawba County Board of Adjustment in the manner provided by N.C.G.S. 153A-345(b).

19. Default.

(i) The failure of Key Harbor, Crescent or the County to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting party or parties to pursue such remedies as allowed under applicable law against the defaulting party only, provided, however, that no termination of this Agreement may be declared by the County as to a defaulting party absent its according to the defaulting party the notice and opportunity to cure set out in N.C.G.S. 153A-349.8. In addition to any other rights or remedies, any party may institute legal action against a defaulting party to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement, or to obtain any remedies consistent with the purposes of the Agreement. Legal actions shall be instituted in the Superior Court of the

County of Catawba, State of North Carolina, and the parties hereto submit to the personal jurisdiction of such court without application of any conflicts of laws provisions of any jurisdiction.

(ii) The covenants, commitments and obligations of Key Harbor and Crescent under the terms of this Agreement are independent obligations, such that Key Harbor is not responsible or liable for the performance of Crescent's covenants, commitments and obligations under this Agreement, and Crescent is not responsible or liable for the performance of Key Harbor's covenants, commitments and obligations under this Agreement. Accordingly, in the event that Crescent fails to perform any of its covenants, commitments or obligations hereunder, Key Harbor shall not be deemed to be in default under this Agreement, the County may not pursue any legal or equitable action against Key Harbor for Crescent's failure to perform and the County may not terminate this Agreement as to Key Harbor. In the event that Key Harbor fails to perform any of its covenants, commitments or obligations hereunder, Crescent shall not be deemed to be in default under this Agreement, the County may not pursue any legal or equitable action against Crescent for Key Harbor's failure to perform and the County may not terminate this Agreement as to Crescent.

(iii) In no event shall Carolina Centers have any responsibility or liability for the performance of Key Harbors' or Crescent's covenants, commitments and obligations hereunder, or liability for the nonperformance of Key Harbor's or Crescent's covenants, commitments and obligations hereunder. However, Carolina Centers shall be obligated to take all necessary steps, as the owner of the Village Center Property, the Mountain Creek Property and the Terrapin Creek Property to enable Crescent to meet all affirmative obligations hereunder.

(iv) In the event that Key Harbor fails to perform any of its covenants, commitments and obligations hereunder after notice and an opportunity to cure, the County may, until such default is cured, withhold the issuance of any further building permits for homes within Key Harbor or withhold the issuance of certificates of occupancy for any homes within Key Harbor that have not been purchased or have not been placed under contract for sale. The County may not withhold the issuance of any further building permits or certificates of occupancy for the Village Center Property, the Terrapin Creek Property or the Mountain Creek Property in the event that Key Harbor fails to perform any of its covenants, commitments or obligations hereunder.

(v) In the event that Crescent fails to perform any of its covenants, commitments and obligations hereunder after notice and an opportunity to cure, the County may withhold the issuance of any further building permits or certificates of occupancy for the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property until such default is cured. The County may not withhold the issuance of any further building permits or certificates of occupancy for the Key Harbor Property in the event that Crescent fails to perform any of its covenants, commitments or obligations hereunder.

(vi) In the event that it becomes necessary for the County to pursue a civil action against a defaulting party and the County is the prevailing party in such action, then the County shall be entitled to recover its reasonable attorneys fee from the defaulting party.

(vii) Unless otherwise clearly indicated, Key Harbor' duties and liabilities under this Agreement shall be joint and several as to each of Key Harbor Communities and Key Harbor Holdings.

20. Notices. Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5<sup>th</sup>) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. Parties shall make reasonable inquiry to determine whether the names of the persons listed in this Agreement should be substituted with the name of the listed person's successor. All notices, demands, requests, consents, approvals or communications to the County shall be addressed to:

Mr. Tom Lundy  
Catawba County Manager  
P.O. Box 389  
Newton, NC 28658  
828-465-8392 (fax)  
tlundy@catawbacountync.com

with copies to:

Mr. Jacky Eubanks  
Catawba County Planning Department  
P.O. Box 389  
Newton, NC 28658  
828-465-8484 (fax)  
jeubanks@catawbacountync.com

Thomas E. Terrell, Jr.  
Smith Moore, LLP  
P.O. Box 21927  
Greensboro, NC 27420  
336-433-7482 (fax)  
tom.terrell@smithmoorelaw.com

to Key Harbor at:

Doug Adams  
Key Harbor Communities, LLC  
2010 Industrial Parkway  
Suite 400  
McDonough, GA 30253  
770-507-8499 (fax)

asproperties@bellsouth.net

Doug Adams  
Key Harbor Holdings, LLC  
2010 Industrial Parkway  
Suite 400  
McDonough, GA 30253  
770-507-8499 (fax)  
asproperties@bellsouth.net

with copies to:

John Carmichael  
Kennedy Covington Lobdell & Hickman  
214 North Tryon Street, 47<sup>th</sup> Floor  
Charlotte, NC 28202  
704-353-3209 (fax)  
jcarmichael@kennedycovington.com

Allan McClellan  
2725 Westinghouse Boulevard, Suite 100  
Charlotte, NC 28273  
704-587-4556 (fax)  
Allan@magdevelopment.com

to Crescent at:

Phil Hayes  
Crescent Resources  
400 South Tryon Street, Suite 1300  
Charlotte, NC 28201  
980-373-5829 (fax)  
pmhayes@duke-energy.com

with copies to:

John Carmichael  
Kennedy Covington Lobdell & Hickman  
214 North Tryon Street, 47<sup>th</sup> Floor  
Charlotte, NC 28202  
704-353-3209 (fax)  
jcarmichael@kennedycovington.com

to Carolina Centers at:

Phil Hayes  
Crescent Resources  
400 South Tryon Street, Suite 1300  
Charlotte, NC 28201  
980-373-5829 (fax)  
pmhayes@duke-energy.com

with copies to:

John Carmichael  
Kennedy Covington Lobdell & Hickman  
214 North Tryon Street, 47<sup>th</sup> Floor  
Charlotte, NC 28202  
704-353-3209 (fax)  
jcarmichael@kennedycovington.com

21. Entire Agreement. This Agreement sets forth and incorporates by reference all of the agreements, conditions and understandings between Crescent, Carolina Centers, Key Harbor and the County relative to the Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein or as contained in the Catawba County UDO or as expressed in the development conditions applicable to these parcels of land.

22. Construction. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

23. Assignment. After notice to the County, Key Harbor, Crescent or Carolina Centers may assign its respective rights and responsibilities hereunder to subsequent land owners of all or any portion of the relevant parcels of land, provided that no assignment as to a portion of the relevant parcel of land will relieve the assigning party of responsibility with respect to the remaining portion of the relevant parcel of land owned by the assigning party without the written consent of the County. Subject to the provisions of N.C.G.S. § 39-23, in the event that Crescent, Carolina Centers or Key Harbor sells all of its relevant parcel or parcels of land and assigns its respective rights and responsibilities to a subsequent land owner, then such selling party shall be relieved of all of its covenants, commitments and obligations hereunder.

24. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.

25. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

26. Agreement to Cooperate. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action; provided, however, each party shall retain the right to pursue its own independent legal defense.

27. Agreements to Run with the Land. This Agreement shall be recorded in the Catawba County Registry. The Agreements contained herein shall be deemed to be a lien upon, binding upon and run with the land and shall be binding upon and an obligation of all successors in the ownership of the relevant parcels of land.

28. Severability. If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions.

29. Authority. Each party represents that it has undertaken all actions necessary for corporate or public approval of this Agreement, and that the person signing this Agreement has the authority to bind the company or the County.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereby set their hands and seals, effective the date first above written.

Crescent Resources, LLC

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Carolina Centers, LLC

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Key Harbor Communities, LLC

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Key Harbor Holdings, LLC

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Catawba County

By: \_\_\_\_\_  
Title: \_\_\_\_\_

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Catawba County Finance Director

State of \_\_\_\_\_  
County of \_\_\_\_\_

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that \_\_\_\_\_, Managing Partner of Crescent Resources, LLC, a \_\_\_\_\_ Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company. Witness my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, 2006.

My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public  
=====

State of \_\_\_\_\_  
County of \_\_\_\_\_

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that \_\_\_\_\_, Managing Partner of Carolina Centers, LLC, a \_\_\_\_\_ Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company. Witness my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, 2006.

My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public  
=====

State of \_\_\_\_\_  
County of \_\_\_\_\_

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that \_\_\_\_\_, Managing Partner of Key Harbor Communities, LLC, a \_\_\_\_\_ Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company. Witness my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, 2006.

My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public  
=====



State of \_\_\_\_\_  
County of \_\_\_\_\_

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that \_\_\_\_\_, Managing Partner of Key Harbor Holdings, LLC, a \_\_\_\_\_ Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company. Witness my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, 2006.

My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public

=====  
State of \_\_\_\_\_  
County of \_\_\_\_\_

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he is \_\_\_\_\_ of Catawba County and acknowledged, on behalf of Catawba County, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, 2006.

My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public